Bank of America

Bank of America
Legal Department
NC1-002-29-01
101 South Tryon Street
Charlotte, NC 28255

Tel 704.386.9644
Fax 704.386.1032

September 23, 2003

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CG Docket No. 02-278, FCC 03-153

Dear Sir or Madam:

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the information collections ("Proposal") contained in the Federal Communications Commission's ("Commission") Rules and Regulations Implementing the Telephone Consumer Protection Act ("TCPA") of 1991, published in the Federal Register on July 25, 2003. Bank of America is one of the world's leading financial services companies, and is the sole shareholder of Bank of America, N.A., one of the largest banks in the United States. Through the nation's largest financial services network, Bank of America provides financial products and services to 30 million households and two million businesses, and also provides international corporate financial services for clients around the world.

Bank of America's primary concern with respect to the Proposal is the provision contained in Part 64.1200(a)(3)(i) which prohibits distribution of unsolicited fax advertisements to businesses without obtaining a signed, written agreement including the facsimile telephone number. While most of the rule relates to telephone solicitations to consumers, and Bank of America does not send unsolicited facsimile advertisements to consumers, this portion of the rule is applicable to businesses and does not include the prior established business relationship exemption. Bank of America does business with many automobile dealers and real estate agents, as an example, and frequently sends updated rate and term information to those businesses by facsimile. Often, this is the most expeditious manner for sending such updated information as well as frequently being the chosen manner for receipt of such materials by those businesses. We believe that requiring the Bank to obtain additional signed, written agreements to receive such materials by facsimile from each such business every time they may change a fax number is excessive and unnecessary.

In many cases, such as with the automobile dealers, we already have a written dealer agreement with these businesses which authorizes the Bank to update rates and terms at which it will offer to purchase installment sales contracts from the dealer by facsimile transmission. Those businesses agree to the updated terms by submitting contracts to the Bank for purchase. This is a commonly recognized means of amending agreements between businesses and the

Proposal interferes with this common means of contracting between businesses. As such, it is inappropriate and creates an unnecessary burden on both the business sending such materials by facsimile and the receiving business. This provision in the Proposal neither minimizes the information collection burden on industry nor maximizes the practical utility and public benefit. Therefore, Bank of America believes that such an information collection is overly burdensome and should not be approved.

The Proposal also includes a provision that requires telemarketers to record a request to be placed on the company's internal do not call list within 30 days (Part 64.1200(d)(3)). Bank of America believes that companies may need more than 30 days to ensure that such a request has been fully implemented. The process may include receipt of the request from a vendor, input to a database, distribution of that information throughout the organization, and re-scrubbing of calling lists that are already in the process of being used in a campaign. While Bank of America clearly does not disagree with the need to record the request and honor it, and in fact has done so throughout its organization for some time, the restriction in the time period during which the company must ensure that calls to that number have stopped is significant. This is especially true in light of the relatively severe penalty for making even one call in violation of that request. This time is significantly shorter than the time period for scrubbing against the national do not call list.

Part 64.1200(d)(3) makes the person on whose behalf a call is made liable for failure to honor a do not call request made to its vendor. While we understand that the party on whose behalf a call is made cannot avoid liability entirely for the actions of its vendors, Bank of America suggests that the rule provide for a safe harbor for the party on whose behalf the calls was made. The safe harbor might provide that the party on whose behalf the call is made would not be liable if it had in place contractual obligations with the vendor to communicate that information in a timely manner, required training by the vendor of its employees and other processes in place to ensure prompt honoring of do not call requests received from its vendors.

We would be happy to discuss our views in greater detail, or to discuss any new ideas the regulatory authorities wish to pursue. In that regard, please contact Kathryn D. Kohler at (704) 386-9644.

Very truly yours,

Kathryn D. Kohler

Kathryn D. Kohler
Assistant General Counsel

Cc: Leslie Smith
Federal Communications Commission
Leslie.Smith@fcc.gov

554998